



Telecom Management, Inc. d/b/a Pioneer Telephone
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www.pioneertelephone.com

DOCKET FILE COPY ORIGINAL

Via Certified Mail No. 70032260000702925069

October 25, 2007

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
445 12TH ST SW
ROOM TW-A325
WASHINGTON DC 20554

CC: 96-45

RE: **Telecom Management, Inc. / Appeal of USAC Billing Decision**
Filer ID: 824332
Docket No. 96-45

Dear FCC Secretary:

Please accept this letter and the accompanying documentation as Telecom Management, Inc.'s (TMI) appeal of a decision by USAC on October 8, 2007 to leave TMI's invoice unchanged after TMI disputed certain true-up adjustments. TMI was advised to file this Appeal directly with the FCC by Michelle Tilton, Director of USAC Billing Operations, since USAC has already reviewed this issue.

Background

On April 20, 2005, TMI filed a Contributor Appeal with USAC asking for review of USAC's decision to bill TMI for certain true-up adjustments on TMI's contributor invoice (see Attachment 1). USAC issued a Decision dated December 30, 2005 granting TMI's Appeal and issued the appropriate adjustment credits to TMI's account on its February 2006 and March 2006 contributor invoices (see Attachment 2). This USAC Decision was subsequently relied on by the FCC to reduce TMI's forfeiture amount in its September 15, 2006 Order under File No. EB-04-IH-0587 (See Attachment 3).

Billing Dispute

In July of 2006, true-up charges for the 2004 499-A appeared on TMI's invoice, along with a credit for each charge. TMI contacted USAC staff and inquired why these items were appearing on its invoice since those charges were resolved in USAC's December 30, 2005 Decision as charges that never should have been billed to TMI. USAC staff assured TMI that this was a computer error which appeared to be correcting itself, since each charge had a corresponding credit to zero-out the charge, and to disregard such items.

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10/25/2007

The 2004 499-A true-up charges continued to appear on TMI's contributor invoices with corresponding credits over the course of the next year until TMI's July 20, 2007 statement, at which point the charges appeared *without* the corresponding credits. TMI contacted USAC staff in August 2007 for an explanation and filed a dispute via e-mail on August 28, 2007 (see Attachment 4). After much research, USAC sent a letter to TMI dated October 8, 2007 (see Attachment 5) stating that the credits awarded to TMI in USAC's December 30, 2005 Decision were "overstated by \$9,279.36" and, in order to correct this error, USAC billed TMI for this amount (divided into three installments) on its July, August and September 2007 invoices. As required by FCC regulations, TMI paid this amount under protest in order to avoid being placed in Red Light status.

Appeal of Dispute Decision

TMI, by this letter, appeals and requests the FCC review the decision by USAC in July 2007 to partially rescind the credits applied to TMI's account in February and March 2006.

For USAC to partially rescind credit amounts *over a year* after those credits were issued in connection with a final Appeal Decision defies FCC rules that set time limits on appeals and ultimately affects TMI's right of due process. USAC issued a Decision on Appeal concerning the 2004 499-A true up charges in question in December 2005 that was considered final after the 30-day appeal period passed in January 2006. The credit amounts issued to TMI, though stated in the Appeal Decision as "approximate" values, were made *definite* by virtue of USAC issuing such credits on TMI's February and March 2006 invoices. Furthermore, those credit amounts were relied on by the FCC to reduce TMI's forfeiture amount in its September 15, 2006 Order, considered final after the 30-day appeal period passed in October 2006. If this was a routine USAC billing error in the normal course of TMI's Form 499 filings, TMI agrees it would have to accept a reasonable amount of back-billing, but this situation clearly cannot be considered as such. If USAC is allowed to amend a final Appeal Decision, which, in turn, also affects the calculations of a final FCC Order, then TMI must be provided with an equal right to re-open the proceeding connected with the FCC Order to make additional arguments that could persuade the FCC to rescind or modify the forfeiture amount in the Order. To allow USAC a second bite at the apple and not TMI would violate TMI's right of due process.

Relief Requested

For the foregoing reasons, TMI respectfully requests that the FCC order USAC to issue a credit in the amount of \$9,279.36 to TMI's contributor account.

Please contact me by phone or by e-mail at kphotiades@pioneertelephone.com if you have any questions or need additional information. Thank you for your attention to this matter.

Sincerely,



Kevin Photiades
Regulatory Manager



Telecom Management, Inc. d/b/a Pioneer Telephone
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Phone: (207) 774-9500 • Fax: (207) 774-9508
www.pioneertelephone.com

Via Certified Mail No. 70032260000702925007

April 18, 2005

Contributor Letter of Appeal
USAC
2000 L Street, NW
Suite 200
Washington, DC 20036

RE: Telecom Management, Inc. / Appeal of USAC Billing Decision
Filer ID: 824332
Docket No. 96-45

Dear Sir or Madam:

Please accept this letter and the accompanying documentation as Telecom Management, Inc.'s (TMI) appeal of a decision by USAC on April 8, 2005 to leave TMI's invoice unchanged after TMI filed a billing dispute.

Background

TMI did not timely file its 499-Q and 499-A forms from the period it started generating long distance revenue in mid-2002 until TMI filed its first 499-Q on August 1, 2004. TMI came forward and disclosed this oversight to USAC, who advised TMI to file all outstanding 499-Qs and As in December 2004 (copy attached). USAC then processed those forms and sent invoices detailing the adjustments for each of the various past filing periods.

Billing Dispute

USAC's adjustments included true-up amounts for the 2003 and 2004 499-As. USAC contended that such true-ups were necessary due to the change in the USF contribution method from historical revenue to projected revenue, treating TMI's filing as if TMI had filed each 499 form by the original due date.

TMI asserted that such an arbitrary treatment of its 499 filings was incorrect and that TMI's quarterly historical revenue figures in its 499-Qs matched the yearly revenue figures in its 499-As, which made the true-ups unnecessary. After TMI filed its dispute and spoke with various USAC staff, USAC sent an email dated April 8, 2005 (copy attached) to TMI stating that it found no errors and would not make any adjustments to TMI's billing invoices.

Appeal of Dispute Decision

TMI, by this letter, appeals and requests review of the decision by USAC to bill TMI for the aforementioned true-ups for the 2002 and 2003 calendar years.

TMI is aware that the USF contribution method changed and that the FCC subsequently revised the true-up procedure for the 2003 and 2004 499-As. The revisions, as stated in the March 13, 2003 FCC Order, were necessary because USAC felt it "should only apply the true-up to revenue periods for which universal service contributions were actually assessed."¹ However, neither the revisions nor the Orders allow for a future carrier such as TMI who filed its 499s after the revised true-up procedure time period had passed, whereby TMI would be assessed for each quarter in one review. Because TMI filed all of its 499s together, the filing timeline that necessitated the true-up procedure does not apply since the cumulative effect of TMI's filing gave USAC *all* of its historical revenue figures.

In essence, USAC arbitrarily decided to treat TMI's filing as if it had timely filed its 499 forms all along. Since TMI left the projected revenue areas of each 499-Q form blank, USAC populated the blank areas with each subsequent 499-Q form's historical revenue figures and then used those figures as "projections" to calculate TMI's assessment. This method resulted in two extra true-up assessments on top of the quarterly assessments against TMI. The purpose of a true-up, by the FCC's own admission, should only be "to refund or collect from contributors any over-payments or under-payments" after comparing its quarterly revenue figures with its yearly revenue figure.² As evidenced in its invoice, TMI has already been assessed for each of the outstanding quarters – there should have been no over-payment or under-payment to be made since its quarterly figures matched its yearly figures.

Relief Requested

For the foregoing reasons, TMI respectfully requests that the annual true-up amounts for 2002 and 2003 (\$32,593.47 and \$45,179.34, respectively) be removed from TMI's USAC account.

Please contact me by phone or by e-mail at regulatory@pioneertelephone.com if you have any questions or need additional information.

Thank you for your attention to this matter.

Sincerely,



Kevin Photiades
Compliance Specialist

¹ See FCC Order and Second Order on Reconsideration 03-58 released March 14, 2003, item 15, page 7.

² *Id.* at item 14.



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

December 30, 2005

BY REGISTERED MAIL

Kevin Photiades
Compliance Specialist
Telecom Management, Inc. d/b/a Pioneer Telephone
583 Warren Avenue
Portland, Maine 04103

Re: Telecom Management, Inc. d/b/a Pioneer Telephone (499 Filer ID # 824332)

Dear Mr. Photiades:

The Universal Service Administrative Company (USAC) has completed an evaluation of the letter of appeal submitted on behalf of Telecom Management, Inc. d/b/a Pioneer Telephone (TMI) dated April 18, 2005 (Appeal). Your Appeal requests that USAC review its calculations for the 2003 and 2004 annual Federal Communications Commission (FCC or Commission) revenue reporting reconciliation process (the "A/Q true-up" process) and revised associated 2002 and 2003 Universal Service Fund (USF) billings. As explained below, USAC grants your Appeal.

Summary and Decision

FCC regulations require contributors to submit an annual FCC Form 499-A (Form 499-A) reporting the prior year's actual revenue, in part, for the purpose of permitting an annual true-up of the contribution period based on the revenue reported. During the A/Q true-up process, prior quarterly billings are tested using reported actual revenue and revised if necessary.

The contribution period at issue here was affected by an FCC-mandated change in the USF contribution methodology from basing USF contributions on historic revenue to projected revenue. This change resulted in two quarters of revenues (fourth quarter 2002 and first quarter 2003) not being utilized to calculate TMI's USF contributions.¹ Thus,

¹ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service*,

both the 2003 Form 499-A (reporting 2002 revenue) and the 2004 Form 499-A (reporting 2003 revenue), true-up contributions made during a nine-month period.²

TMI's Filings and Associated True-ups

TMI did not timely file quarterly revenue on FCC Form 499-Qs for 2002 or 2003. When TMI late-filed its Form 499-Qs for those years, in some instances it reported actual revenue while in others it left portions of the forms blank. TMI also submitted its February 2003 499-Q using an incorrect form. Due to the contribution methodology change described above, the February 2003 499-Q was unique in that it reported fourth quarter 2002 historical revenue, first quarter 2003 projected revenue, and second quarter 2003 projected revenue. This form bridged the gap between the historical and projected reporting methodologies, allowing USAC to reduce the 2003 and 2004 499-A forms (reporting 2002 and 2003 annual revenue, respectively) to a nine-month period. TMI used the prior year's version of the February 499-Q, which only reported fourth quarter historical revenue.

TMI's filing errors required USAC to, among other things, manually transfer TMI's revenue from the incorrect form to a correct form. Upon review, USAC has identified inconsistencies associated with the data entry that was required as a result of TMI's late and incorrect form filings. The resulting revenue data entered into USAC's system included \$0 for fourth quarter 2002 and first quarter 2003. These revenues were excluded from the A/Q true-up calculations for those years. The result was that TMI was assessed based on four quarters worth of revenue during each of the methodology transition years rather than on three quarters of revenue as should have been the case.

Explanation of Decision and Revisions to Account

USAC's review demonstrates that it is necessary to revise both the 2003 and 2004 true-up calculations (revising 2002 and 2003 billings) for TMI. Calculations indicate that the amount of the credits due TMI are slightly different (less for 2002 and greater for 2003) than what TMI has requested. The 2002 A/Q true-up credit refund due is approximately \$30,200.88; the 2003 A/Q true-up credit refund due is approximately \$53,816.15.³

North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 at ¶ 15 (2003) (Reconsideration Order) (directing USAC "not to apply the annual true-ups for calendar years 2002 and 2003 to revenues from the fourth quarter 2002 and first quarter 2003").

² The 2005 Form 499-A (reporting 2004 revenue), once again, true-up a full year of contributions.

³ USAC believes the difference between what it calculated as the amount due TMI and the amount that TMI requested in its appeal (2002-\$32,593.47 and 2003-\$45,179.34) is due to the fact that USAC's calculation is based on the annual revenue reported on the Form 499-As and that TMI may have attempted

Kevin Photiades
Telecom Management, Inc. d/b/a Pioneer Telephone
December 30, 2005
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Accordingly, USAC will revise and correct TMI's account to reflect billings based upon these calculations and credits will post to TMI's account in three equal installments beginning with the January 2006 invoice.

Decision on Appeal: Granted.

USAC hereby grants TMI's Appeal.

If you disagree with USAC's Decision, you may file an appeal with USAC or with the FCC. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Sincerely,

USAC

Universal Service Administrative Company

cc: Cathy Carpino, FCC Wireline Competition Bureau
Hillary DeNigro, FCC Enforcement Bureau
Regina Dorsey, FCC Office of Managing Director

to individually revise each quarter's revenue. The original filed 499-Qs that were used for billings and the respective annual 499 form are used to perform the annual true up.

STATEMENT OF ACCOUNT

NEW CHARGES = \$28,359.41
 RECEIVED 2 CREDITS, WILL RECEIVE
 ONE MORE IN MARCH
 Charges Credits

Date	Description		
	Previous Balance	\$108,481.18	
02/15/2006	Late Payment Fee	\$565.67	
02/13/2006	Payment		(\$28,359.48)
02/15/2006	Schools & Libraries Support Mechanism Credit		(\$4,347.64)
02/15/2006	Schools & Libraries Support Mechanism Credit		(\$4,347.64)
02/15/2006	Schools & Libraries Support Mechanism Credit		(\$3,493.28)
02/15/2006	Schools & Libraries Support Mechanism Credit		(\$3,493.28)
02/15/2006	Rural Health Care Support Mechanism Credit		(\$163.73)
02/15/2006	Rural Health Care Support Mechanism Credit		(\$163.73)
02/15/2006	Rural Health Care Support Mechanism Credit		(\$52.17)
02/15/2006	Rural Health Care Support Mechanism Credit		(\$52.17)
02/15/2006	High Cost Support Mechanism Credit		(\$11,022.99)
02/15/2006	High Cost Support Mechanism Credit		(\$11,022.99)
02/15/2006	High Cost Support Mechanism Credit		(\$5,430.62)
02/15/2006	High Cost Support Mechanism Credit		(\$5,430.62)
02/15/2006	Low Income Support Mechanism Credit		(\$2,404.36)
02/15/2006	Low Income Support Mechanism Credit		(\$2,404.36)
02/15/2006	Low Income Support Mechanism Credit		(\$1,090.89)
02/15/2006	Low Income Support Mechanism Credit		(\$1,090.89)

Transactions occurring after 02/15/2006 are not reflected on this statement.

The Balance Due on this Statement represents your mandatory contributions to universal service support and constitutes a Debt owed to the United States as defined by 31 U.S.C § 3701, the Debt Collection Act of 1982 (Public Law 97-365), and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA) and any amendments thereto. This Statement constitutes a demand for payment of the Balance Due in accordance with and pursuant to Federal Communications Regulations (47 C.F.R. § 1.1911) and the DCIA. Please refer to the reverse side of this Statement for important information and a description of your legal rights, obligations, and opportunities under the DCIA.

Statement Date	Invoice Number	Filer 499 ID	Balance Due USAC
02/23/2006	UBDI0000183909	824332	\$ 52,469.82
FORM 499Q DATA		PAYMENT INFORMATION	
This month's support mechanism charges were calculated using an FCC contribution factor of 0.102000 and the following revenue data:		Payment must be received by 03/15/2006 to avoid late payment charges.	
November 2005 499Q		Please remit ACH payments in a CCD+ format to ABA #071000505, Account #5590045653.	
120b	\$635,000.00	Payments must include your Company Name, Filer 499 ID, and Invoice Number to ensure timely posting.	
120c	\$285,000.00		
If the figures do not correspond with your records, please contact the 499 Data Collection Agent.			

STATEMENT OF ACCOUNT

Date	Description	Charges	Credits
	Previous Balance	\$52,469.82	
03/15/2006	Late Payment Fee	\$134.68	
03/15/2006	Low Income Support Mechanism Credit		(\$1,090.89)
03/15/2006	Low Income Support Mechanism Credit		(\$2,404.36)
03/15/2006	Rural Health Care Support Mechanism Credit		(\$52.17)
03/15/2006	Rural Health Care Support Mechanism Credit		(\$163.73)
03/15/2006	Schools & Libraries Support Mechanism Credit		(\$3,493.28)
03/15/2006	Schools & Libraries Support Mechanism Credit		(\$4,347.64)
03/15/2006	High Cost Support Mechanism Credit		(\$5,430.62)
03/15/2006	High Cost Support Mechanism Credit		(\$11,022.99)
03/13/2006	Payment		(\$28,359.48)
03/15/2006	High Cost Support Mechanism Charges	\$15,927.34	
03/15/2006	Low Income Support Mechanism Charges	\$3,939.61	
03/15/2006	Rural Health Care Support Mechanism Charges	\$131.87	
03/15/2006	Schools & Libraries Support Mechanism Charges	\$8,360.66	
	BALANCE DUE USAC ON 04/14/2006	\$24,598.82	

PAY BALANCE DUE

Transactions occurring after 03/15/2006 are not reflected on this statement.

The Balance Due on this Statement represents your mandatory contributions to universal service support and constitutes a Debt owed to the United States as defined by 31 U.S.C § 3701, the Debt Collection Act of 1982 (Public Law 97-365), and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA) and any amendments thereto. This Statement constitutes a demand for payment of the Balance Due in accordance with and pursuant to Federal Communications Regulations (47 C.F.R. § 1.1911) and the DCIA. Please refer to the reverse side of this Statement for important information and a description of your legal rights, obligations, and opportunities under the DCIA.

Statement Date	Invoice Number	Filer 499 ID	Balance Due USAC
03/22/2006	UBDI0000187794	824332	\$ 24,598.82
FORM 499Q DATA		PAYMENT INFORMATION	
This month's support mechanism charges were calculated using an FCC contribution factor of 0.102000 and the following revenue data:		Payment must be received by 04/14/2006 to avoid late payment charges.	
November 2005 499Q		Please remit ACH payments in a CCD+ format to ABA #071000505, Account #5590045653.	
120b	\$635,000.00	Payments must include your Company Name, Filer 499 ID, and Invoice Number to ensure timely posting.	
120c	\$285,000.00		
If the figures do not correspond with your records, please contact the 499 Data Collection Agent.			

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Telecom Management, Inc.

File No. EB-04-IH-0587
NAL/Acct. No. 200532080142
FRN No. 0005-8591-11

ORDER OF FORFEITURE

Adopted: September 14, 2006

Released: September 15, 2006

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$237,992 against Telecom Management, Inc. ("TMI") for willful and repeated violations of the Communications Act of 1934, as amended (the "Act"), and the Commission's rules. For the reasons set forth below, we find that TMI willfully and repeatedly violated the Act and the Commission's rules by failing to contribute to the Universal Service Fund ("USF")¹ and failing to pay its regulatory fees.²

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in more detail in the Notice of Apparent Liability and Order ("NAL" or "TMI NAL")³ previously issued by the Commission and need not be repeated here at length. TMI is a Maine-based telecommunications provider that offers long distance plans, toll free numbers, and phone cards.⁴ In 2002, it began providing these services by reselling intrastate, interstate, and international long-distance services purchased from Global Crossing Bandwidth, Inc. ("Global Crossing").⁵ As such, TMI is subject to the obligations of section 254(d) of the Act and sections 54.706, 1.1154, and 1.1157(a)(1) of our rules. Section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."⁶ Section 54.706

¹ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

² 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

³ *Telecom Management Inc.*, Notice of Apparent Liability and Order, 20 FCC Rcd 14151 (2005) ("TMI NAL").

⁴ See <http://support.pioneertelephone.com/test/support.asp?kb=42> (last accessed November 25, 2005).

⁵ See *id.*; Letter from Leon L. Nowalsky, Nowalsky, Bronston & Gothard, Counsel for Telecom Management, Inc., to Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated December 20, 2004 ("TMI December 20, 2004 Letter"), Response to Inquiry 5.

⁶ 47 U.S.C. § 254(d).

of the Commission's rules requires all telecommunications carriers that provide interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the USF based on their projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.⁷ Sections 1.1154 and 1.1157 require that interstate telecommunications carriers pay regulatory fees on the basis of interstate and international end-user revenue.⁸

3. The Universal Service Administrative Company ("USAC") administers the universal service support mechanisms and performs billing and collection functions.⁹ The Commission requires carriers to provide revenue information to USAC on FCC Form 499 ("Telecommunications Reporting Worksheet") on a quarterly and annual basis,¹⁰ and USAC uses that information to determine the amount of each carrier's universal service contributions on a quarterly basis, with a yearly true-up using the Annual Worksheet.¹¹ USAC bills carriers, including TMI, each month based on their quarterly contribution amount.¹²

4. In 2004, the Enforcement Bureau ("Bureau") sought to identify resellers of telecommunications service that had failed to register as telecommunications service providers with the Commission as well as satisfy various other Commission program requirements.¹³ To this end, on March 30, 2004 and June 18, 2004, the Bureau's audit staff sent letters to TMI requesting information pertaining to its compliance with the Commission's registration requirement.¹⁴ After receiving no response, the

⁷ 47 C.F.R. §§ 54.706, 54.709.

⁸ 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

⁹ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18415, ¶ 25 (1997) ("*NECA Changes Order*"); 47 C.F.R. § 54.702(b).

¹⁰ 47 C.F.R. § 54.711.

¹¹ See 47 C.F.R. § 54.709(a).

¹² See, e.g., *Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration (in CC Docket No. 96-45), Eighth Report and Order (in CC Docket No. 96-45), and Sixth Report and Order (in CC Docket No. 96-262), 15 FCC Rcd 1679, 1687, ¶ 18 (1999); *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954, ¶ 17 (2000); *Federal-State Joint Board on Universal Service*, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971-72, ¶ 35 (2002); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Board on Universal Service*, Second Order on Reconsideration (in CC Docket No. 97-21), 12 FCC Rcd 22423, 22425, ¶ 3 (1997). Carriers must pay by the date shown on the invoice from the Administrator. 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made."). See, e.g., *Proposed Third Quarter 2003 Contribution Factor*, Public Notice, 18 FCC Rcd 11442 (Wireline Comp. Bur. 2003) ("Contribution payments are due on the date shown on the administrator invoice.").

¹³ See 47 C.F.R. § 64.1195(a).

¹⁴ See Letter from Hugh L. Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, FCC, to Telecom Management, Inc., dated March 30, 2004 (requesting confirmation that TMI had filed registration information pursuant to section 64.1195(a) of the Commission's rules); Letter from Hugh L. Boyle, Chief Auditor, (continued....)

Bureau issued a letter of inquiry ("LOI") on November 18, 2004.¹⁵ The December 20, 2004 LOI response¹⁶ and January 17, 2005 supplemental response¹⁷ filed by TMI confirmed that the carrier failed to contribute to the USF and pay regulatory fees while operating as an interstate telecommunications carrier for more than two years despite having collected several hundred thousand dollars in USF fees from its customers.¹⁸

5. On August 12, 2005, the Commission issued an *NAL* against TMI proposing a forfeiture of \$280,000 for the apparent willful and repeated failure to pay universal service contributions on three occasions from August to October 2004 and failure to timely make a regulatory fee payment in August 2004. TMI submitted a response to the *NAL* on August 24, 2005.¹⁹

6. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁰ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²¹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,²² and the Commission has so interpreted the term in the section 503(b) context.²³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁴ "Repeated" means that the act was committed or omitted more than once, or lasted more than one day.²⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been

(Continued from previous page)

Investigations and Hearings Division, Enforcement Bureau, FCC, to Telecom Management, Inc., dated June 18, 2004 (again requesting confirmation that TMI had filed registration information pursuant to section 64.1195(a) of the Commission's rules) (together "Audit Letters").

¹⁵ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Sue Bouchard, Telecom Management Inc., dated November 18, 2004.

¹⁶ See *TMI December 20, 2004 Letter*.

¹⁷ Letter from Leon L. Nowalsky, Nowalsky, Bronston & Gothard, Counsel for Telecom Management, Inc., to Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated January 17, 2005 ("*TMI Supplemental Response*").

¹⁸ TMI filed its registration on April 15, 2004 and a 499-Q due August 1, 2004. TMI then received its first bill from the Universal Service Administrative Company ("USAC") in October 2004 and, in December 2004, back-filed its 2002, 2003 and 2004 annual worksheets and its February 1 and May 1 quarterly worksheets.

¹⁹ Letter from Leon L. Nowalsky, Attorney for Telecom Management, Inc., to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 24, 2005 ("*TMI NAL Response*").

²⁰ 47 U.S.C. § 503(b)(1)(B).

²¹ 47 U.S.C. § 312(f)(1).

²² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²³ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

²⁴ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

²⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁶ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.²⁷

7. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.2 million for a single act or failure to act for violations occurring before September 7, 2004, and up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act for violations occurring on or after September 7, 2004.²⁸ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁹

III. DISCUSSION

8. As set forth below, we find by a preponderance of the evidence that TMI violated section 254(d) of the Act and sections 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission's rules by willfully and repeatedly failing to make contributions toward the Universal Service Fund and failing to pay regulatory fees to the Commission.³⁰

9. In the *TMI NAL*, we proposed a forfeiture of \$280,000 for TMI's apparent willful and repeated violations of section 254(d) of the Act and sections 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission's rules.³¹ We calculated this amount, consistent with Commission precedent, as follows. For TMI's apparent failure to pay universal service contributions, we applied a base forfeiture amount of \$20,000 for each of three months of nonpayment. We then added one-half of the approximately \$420,000 in unpaid universal service contributions, or \$210,000, to the base forfeiture for a proposed forfeiture of \$270,000. For TMI's apparent failure to pay regulatory fees, we applied a \$10,000 forfeiture. As explained below, we reduce the forfeiture amount by \$42,008 based on an USAC amendment to TMI's unpaid USF balance but otherwise reject TMI's various arguments to eliminate or reduce the forfeiture further. We therefore impose a forfeiture of \$237,992 against TMI.

²⁶ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) ("*SBC Forfeiture Order*").

²⁸ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). The Commission recently amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. See *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

²⁹ 47 U.S.C. § 503(b)(2)(D); See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17100, ¶ 27 (1997), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

³⁰ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(a), 1.1154, 1.1157(b)(1).

³¹ *TMI NAL*, 20 FCC Rcd at 14155-58, ¶¶ 11-19.

A. TMI's Violations Were Willful and Repeated

10. In the *TMI NAL Response*, TMI admits it failed to make USF contributions and pay regulatory fees prior to November 2004 but claims that its failures were neither willful nor repeated.³² Based on a preponderance of the evidence, and as discussed in more detail below, we reject TMI's claims. We find that it violated section 254(d) of the Act and sections 54.706, 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully and repeatedly failing to make any of its monthly universal service contribution payments for more than two years, including three such failures within the year prior to our issuing the *TMI NAL*, and by failing to pay any regulatory fees until December 2004.

11. TMI argues that it used a third-party vendor to handle all compliance obligations and it assumed all filings and payments, including the USF contributions and regulatory fee payments, were being made by the third-party vendor.³³ TMI thus contends it cannot be held "solely liable" for these failures because the third party vendor, not TMI, failed to make the payments.³⁴ TMI's attempt to hold this vendor liable for its own failure to live up to its regulatory obligations is misplaced given the Act's express provision holding that the actions of a common carrier's agent are attributable to the carrier. Specifically, section 217 of the Act states that "the act, omission, or failure of any...agent or other person acting...for any common carrier...shall in every case be also deemed to be the act, omission, or failure of such carrier."³⁵ TMI, as a common carrier, is responsible pursuant to section 217 for any failures to comply with our rules by the third-party vendor acting as its agent. Accordingly, TMI is responsible for knowing and ultimately complying with its regulatory obligations and the failure of its agent does not exculpate TMI.³⁶

12. TMI also contends that its violations were not willful, as defined in section 312(f) of the Act, because it did not knowingly or deliberately fail to satisfy its regulatory obligations when its third-party vendor failed to pay the USF contributions and regulatory fees. As stated above, however, willfulness in the context of section 503(b) does not require that an entity know it is acting unlawfully, but merely that it knows it is engaged in the conduct constituting the rule violations.³⁷ Therefore, TMI (acting through its vendor) willfully failed to pay USF contributions and regulatory fees. As discussed above, TMI's use of a third-party vendor to satisfy its regulatory obligations does not shelter it from a finding of willfulness.

13. Similarly, we reject TMI's position that its actions were not willful based on factual distinctions between this case and the Commission's *Globcom* decision.³⁸ TMI claims the Commission relied on *Globcom* in finding TMI willfully failed to make USF contributions and pay regulatory fees.³⁹ Unlike *Globcom*, TMI states it filed some worksheets, and began making USF payments before it

³² See *TMI NAL Response* at 3.

³³ See *TMI NAL Response* at 3.

³⁴ See *id.*

³⁵ See 47 U.S.C. § 217.

³⁶ See, e.g., *All American Telephone Inc.*, Order of Forfeiture, 16, FCC Rcd 16601, 16604 (2001) (noting that carrier is liable under section 217 for forgeries by agent without carrier's knowledge).

³⁷ 47 U.S.C. § 312(f)(1); 47 U.S.C. § 503(b).

³⁸ See *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896 (2003) ("*Globcom*"); see also *Globcom, Inc.*, Order of Forfeiture, FCC 06-49 (rel. April 19, 2006).

³⁹ See *TMI NAL Response* at 4.

received notice from the Commission.⁴⁰ We reject TMI's position. In the *TMI NAL*, the Commission cited to *Globcom* for various propositions (such as identifying the serious, negative impact failure to pay USF contributions has on the program and the forfeiture methodology), but did not rely on *Globcom* to establish that TMI acted willfully under the Act. TMI's attempt therefore to establish its lack of willfulness by distinguishing *Globcom* is wholly unpersuasive.

14. TMI also generally claims that its violations were not repeated.⁴¹ TMI however fails to provide any specific argument or cite to any legal rationale supporting this claim, discussing only its belief that its actions were not willful.⁴² As discussed above, "repeated" means the "commission or omission" of an act "more than once or...for more than one day."⁴³ No evidence is offered to counter the *TMI NAL*'s apparent finding that TMI's violations were repeated. TMI failed to remit USF fees to USAC and to pay regulatory fees for more than two years. Therefore, we find that TMI's failures were repeated.

15. Finally, TMI argues it should not be held liable for forfeiture because it claims it never received the Audit Letters and TMI contends the Commission based its *NAL* findings on TMI's failure to respond to those letters.⁴⁴ TMI's assertion is incorrect. TMI's failure to respond to those specific letters had no bearing on the Commission's decision to propose, or its calculation of, the forfeiture. As discussed herein and in the *TMI NAL*, we based the TMI forfeiture on TMI's failures to make required payments to the USF and the FCC and calculated the forfeiture based on Commission precedent unrelated to any failure to respond to Commission inquiries. No forfeiture was proposed in the *NAL* for TMI's failure to respond to any Commission communication.

B. Forfeiture Amount

16. In its response to the Commission's *TMI NAL*, TMI does not dispute the amount of the forfeiture assigned for failure to timely pay its regulatory fees.⁴⁵ TMI does argue that the Commission should eliminate or reduce the portion of the forfeiture amount attributable to its USF violations because the amount of the forfeiture is in error and because TMI is unable to pay the \$280,000 forfeiture amount. After full consideration of all TMI's assertions, we reject TMI's claim that it is unable to pay the proposed forfeiture but, in light of new information provided by TMI, we find that the forfeiture amount should be reduced.

17. TMI first argues that the forfeiture amount is not warranted because the violations were committed by its vendor and therefore were not intentional or deliberate on TMI's part.⁴⁶ TMI asserts "no justice will be served by tacking an upward adjustment or penalty based upon past occurrences which were non-deliberate, unintentional, and of which TMI was completely unaware."⁴⁷ This argument merely re-packages TMI's already rejected position that it cannot be held liable for the actions of its vendor. As discussed above, TMI's failures were in fact both willful and repeated under the Act and Commission

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.* at 2-4.

⁴³ *Southern California Broadcasting*, 6 FCC at 4388, ¶ 5.

⁴⁴ *TMI NAL Response* at 2.

⁴⁵ See *TMI NAL Response* at 7.

⁴⁶ See *TMI NAL Response* at 5-6.

⁴⁷ See *TMI NAL Response* at 6.

precedent and the proposed forfeiture was premised on these willful and repeated actions.⁴⁸ Therefore, we reject TMI's attempt to have the USF forfeiture rescinded on this basis.

18. TMI also suggests it would be inappropriate to adjust the forfeiture upward given its efforts to come into compliance before it received the LOI.⁴⁹ Initially, we note that our forfeiture methodology already takes into account any effort by TMI to pay down its balance because the upward adjustment is dependent on the outstanding USF balance. TMI's attempt to reduce or eliminate the upward adjustment because of its compliance efforts is misguided; however, considering the totality of its non-compliance. Specifically, the Commission based the upward adjustment on the seriousness, extensive period, and scope of TMI's universal service nonpayment violations.⁵⁰ Prior to TMI's purported efforts to comply, it collected several hundred thousand dollars for USF from its end users, yet withheld USF payments for a period of over two years.⁵¹ Moreover, only after the Bureau's investigation began did TMI back-file all of the required forms that would permit USAC to calculate TMI's outstanding balance. Thus, regardless of TMI's purported pre-investigation efforts, there were significant and long-standing problems with TMI's compliance.⁵² TMI's conduct threatens the integrity and the viability of the universal service program. Based on the totality of the factors under consideration, we deny TMI's request to reduce the USF upward adjustment amount on this basis.

19. Finally, we conclude, notwithstanding the foregoing, that the amount of the forfeiture should be reduced by \$42,008 based on a revision to TMI's outstanding debt. TMI points out that the \$210,000 upward adjustment in the proposed forfeiture is incorrect because the USF past-due debt upon which it was based has been revised.⁵³ As explained in the *TMI NAL* and consistent with the Commission precedent, the upward adjustment was based on one-half of the company's unpaid contributions, in this case determined by the past-due debt as of the date the investigation began.⁵⁴ In support of its argument, TMI submitted with its response a Contribution Letter of Appeal it filed with USAC claiming that USAC overcharged TMI for USF past-due debt by \$77,773.81.⁵⁵ On December 30, 2005, USAC acknowledged that TMI's past due debt should be reduced and determined it would credit TMI for overcharges of \$84,017.03.⁵⁶ In light of USAC's decision to credit TMI for these overcharges, the USF outstanding

⁴⁸ See *supra*, ¶¶ 6-8.

⁴⁹ TMI argues that the Commission used TMI's back filing and payment of past due amounts, presumably something for which it should be given credit, to "levy an upward adjustment." See *TMI NAL Response* at 5. This position misinterprets the Commission's action. We estimated TMI's liability from filed forms because that was the best evidence available at the time of the outstanding overdue debt to USAC. If TMI had not made the filing, we would have estimated the amount from the other financial information produced during the investigation. See, e.g., *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 27; *Telectronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 33; *Communication Services Integrated, Inc.*, 2005 WL 2861527 (F.C.C.) at ¶ 27. The source of the estimate is not the cause of the upward adjustment.

⁵⁰ See *TMI NAL*, 20 FCC Rcd at 14157-58, ¶¶ 15-18.

⁵¹ See *id.*, 20 FCC Rcd at 14157-58, ¶¶ 17-18.

⁵² See *id.*

⁵³ See Letter from Leon L. Nowalsky, Attorney for Telecom Management, Inc., to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 30, 2006, 1 ("Supplemental NAL Response"); *TMI NAL Response* at 4.

⁵⁴ See *TMI NAL* 20 FCC Rcd at 14158, ¶ 18.

⁵⁵ See *TMI NAL Response*, Exhibit B.

⁵⁶ Letter from Universal Service Administrative Company, to Kevin Photiades, Compliance Specialist, Telecom Management, Inc. d/b/a Pioneer Telephone, dated December 30, 2005 ("USAC Letter").

balance is revised from \$420,000 to \$335,983, and, as a result, we revise the upward adjustment for TMI's failure to pay USF contributions to \$167,992 (one-half of \$335,983).⁵⁷

C. Ability to Pay

20. We finally address TMI's claim that it is unable to pay a \$280,000 forfeiture.⁵⁸ In particular, TMI states that the forfeiture would increase its net loss for 2002, cause an overall net loss for 2003, and eliminate its reported profits for 2004.⁵⁹

21. Although ability to pay is a statutory factor that we must consider in setting a forfeiture amount, the Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay assessed forfeitures.⁶⁰ After reviewing the 2002-2004 tax returns submitted by TMI in support of its claim, we find that TMI's gross revenues are sufficiently large relative to the adjusted forfeiture amount, and that the forfeiture amount represents a smaller percentage of TMI's gross revenues than that deemed not to be excessive by the Commission in other cases.⁶¹ We therefore reject TMI's contention that it would be unable to pay the proposed forfeiture and decline to reduce the forfeiture amount on that basis.

IV. CONCLUSION

22. The facts show TMI withheld payments to Congressionally-mandated telecommunications programs for over two years despite collecting hundreds of thousands of dollars from its customers in USF charges. TMI also failed to timely pay its regulatory fees. In light of the seriousness, duration and scope of TMI's violations, we find that a forfeiture of \$237,992 is warranted. The forfeiture amount is composed of (1) a penalty of \$227,992 (the \$270,000 proposed in the NAL, less \$42,008 associated with adjustments to CSII's USF debt) for failing to make three monthly universal service contributions within one-year prior to the release of the *TMI NAL* and (2) a penalty of \$10,000 for failing to timely make its 2004 regulatory fee program payment.

23. We note that TMI is subject to the Commission's "red light rule" as a result of any non-payment detailed above and the Commission will not act on, and may dismiss, any application or request for authorization filed by TMI in accordance with the Commission's rules.⁶²

⁵⁷ TMI also argues that the successful appeal effectively removes the basis for the \$60,000 base forfeiture and the upward adjustment. See *Supplemental NAL Response* at 1; USAC Letter. We reject this argument because the successful appeal does not alter the fact that TMI failed to pay USF fees during the months August, September, and October of 2004, the period upon which the base forfeiture was premised, or the seriousness of TMI's withholding substantial USF payments for over two years, on which the upward adjustment was based.

⁵⁸ See *TMI NAL Response* at 6-7.

⁵⁹ See *id.*

⁶⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17106, ¶ 43 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement"); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089, ¶ 8 (1992); *Independent Communications, Inc.*, 15 FCC Rcd 16060, 16060, ¶ 2 (2000).

⁶¹ See *Alpha Ambulance, Inc.*, 19 FCC Rcd at 2548 n. 15; *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), recon. denied, 16 FCC Rcd 10023 (2001); *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (CIB 1999), recon. denied, 15 FCC Rcd 8640 (Enf. Bur. 2002); *PJB Communications of Virginia*, 7 FCC Rcd 2088 (1992). In this case, the forfeiture represents a smaller percentage of the violator's gross revenues than those issued in the *Local Long Distance, Inc.* (7.9 percent), and *Hoosier Broadcasting Corp.* (7.6 percent) cases.

⁶² 47 C.F.R. § 1.1910.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, TMI SHALL FORFEIT to the United States government the sum of \$237,992 for willfully and repeatedly violating the Act and Commission's rules.

25. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.⁶³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C., 20554.⁶⁴

26. IT IS FURTHER ORDERED that a copy of this FORFEITURE ORDER shall be sent by certified mail, return receipt requested, to Sue Bouchard, Telecom Management, Inc., 583 Warren Avenue, Portland, ME 04103, and Leon Nowalsky, Counsel for Telecom Management, Inc., Nowalsky, Bronston & Gothard, APLLC, 3500 N. Causeway Blvd, Suite 1442, Metairie, LA 70002.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶³ 47 U.S.C § 504(a).

⁶⁴ See 47 C.F.R. § 1.1914.

Kevin Photiades

From: Kevin Photiades
Sent: Tuesday, August 28, 2007 4:04 PM
To: 'customerservice@bcd.universalservice.org'
Subject: Attn: Mary
Attachments: LOA041805.pdf; USACdecision123005.pdf

Filer 499 ID: 824332
Telecom Management, Inc.

Attn: Mary

Per your request, this e-mail will serve as notice of TMI's dispute over USAC's 2004 499-A adjustments billed to our 7/20/07 statement (invoice number UBDI0000257897).

Background: Telecom Management, Inc. (TMI) did not timely file its 499-Q and 499-A forms from November 2002 – May 2004. Once it realized its error, TMI came forward and disclosed this to USAC. USAC advised TMI to file all outstanding forms together in one filing, which TMI did in December 2004. USAC then processed the forms as if TMI had filed each 499 form by the original due date and the billing system generated invoices for adjustments for each of the past time periods, including two true-ups for 2003 and 2004. TMI believed the true-ups to be erroneous, since it had reported all historical figures and left the projected amounts blank (which USAC took it upon themselves to fill in) and filed a Contributor Letter of Appeal (copy attached) in April 2005. USAC responded in December 2005 and issued a \$84,017.03 credit in our favor (copy attached) to reverse the true-ups for 2003 and 2004. Therefore, we request that USAC remove the 2004 499-A adjustments billed to our 7/20/07 statement.

If there is another reason for the 2004 499-A adjustments outside the scope of this e-mail, TMI hereby requests a written explanation from USAC for those adjustments.

Please contact me if you need additional information. Thank you for your attention to this matter.

8/28/2007



October 8, 2007

Kevin Photiades
Compliance Specialist
Telecom Management, Inc. d/b/a Pioneer Telephone
583 Warren Avenue
Portland, Maine 04103

RE: Telecom Management, Inc. d/b/a Pioneer Telephone (499 Filer ID #824332)
7/20/2007 USAC Invoice Dispute

Dear Mr. Photiades:

On August 28, 2007 you submitted a dispute regarding adjustments which posted to Telecom Management, Inc. d/b/a Pioneer Telephone's (TMI) June 20, 2007 invoice. In the dispute, you direct USAC to its December 30, 2005 *Administrator's Decision on Contributor Appeal* (Appeal Decision) and request a written explanation in support of the adjustments and related to the relief granted by the Appeal Decision. This letter provides an explanation of the adjustments and further billings which resulted from USAC's review of TMI's account.

In its Appeal Decision, USAC indicated that recalculations would be performed for true-ups related to the 2003 and 2004 FCC Form 499-As, which reported 2002 and 2003 annual revenue, respectively.

In order to advise TMI of what to expect on the invoices to be issued subsequent to the Appeal Decision, USAC performed a manual review in advance of its billing system's recalculation. The Appeal Decision indicated that the credit amount due TMI related to billings based on TMI's reported 2003 revenue was \$53,816.15. Although, the credits were expected to be applied in three equal installments beginning with the January 2006 invoice, the appropriate systematic changes were not made in time to be reflected on the January 2006 invoice. Therefore the credits were applied manually with two sets being applied in February, and the third set applied in March 2006. The total credits applied tied to the amount indicated in the Appeal Decision.

In April 2006, the first quarter following the application of the credits, the system processed its own calculations based on the revised data associated with the 2004 499-A calculation (2004 A/Q True-up). At that time, the system identified a discrepancy in the manual calculation, and began applying transactions to correct the misstated credits. USAC staff could not account for the discrepancy and continued to manually offset the billing system's attempt at correcting the

calculation. As a result, each month, from May 2006 through June 2007, TMI's invoice reflected the additional systematic adjustments as well as the offsetting manual line items which netted the adjustments to \$0.

In July 2007, USAC staff identified the underlying issue and realized the error with the originally manually calculated credit amount. USAC determined the original credits had used an erroneous value for one quarter of revenue related to the 2004 A/Q True-up. Specifically, the 2Q2003 revenue relied on in the manual calculation was overstated as \$523,995, although TMI's original 2Q2003 billings had been based on revenue of \$414,819. When the true-up contribution factors and circularity factors are applied to that overstatement, credits were overstated by \$9,279.36. In order to correct TMI's billings, USAC allowed the systematic application of these adjustments during July – September 2007¹.

The adjustments applied to the July, August, and September 2007 USAC invoices for TMI are appropriate based on the December 30, 2005 Appeal Decision.

Sincerely,

USAC Financial Operations

¹ $\$523,995 - \$414,819 = \$10,207.96$; $(\$10,207.96 \times .0935) - (\$10,207.96 \times .0935 \times .0910) = \$9,279.36$